IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA WESTERN DIVISION No. 5:17-CT-3105-D

JOSEPH LEE GARDNER,)	
Plaintiff,)	
v.)	ORDER
DR. NATARAJAN RAJAN,)	
Defendants.)	

On February 1, 2018, Magistrate Judge Numbers issued a Memorandum and Recommendation ("M&R") [D.E. 12] and recommended that the court dismiss a portion of plaintiff Joseph Lee Gardner's ("Gardner") 42 U.S.C. § 1983 complaint. No party objected to the M&R.

"The Federal Magistrates Act requires a district court to make a de novo determination of those portions of the magistrate judge's report or specified proposed findings or recommendations to which objection is made." <u>Diamond v. Colonial Life & Accident Ins. Co.</u>, 416 F.3d 310, 315 (4th Cir. 2005) (emphasis, alteration, and quotation omitted); <u>see</u> 28 U.S.C. § 636(b). Absent a timely objection, "a district court need not conduct a de novo review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." <u>Diamond</u>, 416 F.3d at 315 (quotation omitted).

The court has reviewed the M&R and the record. The court is satisfied that there is no clear error on the face of the record. Accordingly, the court adopts the conclusions in the M&R [D.E. 12].

In sum, the court DISMISSES Gardner's: (1) official capacity claims against all defendants; (2) individual capacity claims against defendant James Vaughn; (3) Eighth Amendment claim against

defendant Natarajan Rajan and defendant Dr. Eurgia Land related to the prescription of Flomax and the treatment of his erectile and sexual dysfunctions; and (4) state law medical malpractice claims.

Gardner may proceed with his Eighth Amendment claim against Rajan and Land concerning the management of his pain after surgery. The court further ORDERS as follows:

- 1. The clerk shall manage the action pursuant to Standing Order 14-SO-02.
- 2. If service on any defendant pursuant to the Standing Order fails, the court DIRECTS the United States Marshal Service to make service pursuant to 28 U.S.C. § 1915(d).

SO ORDERED. This **b** day of April 2018.

JAMES C. DEVER III

Chief United States District Judge